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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 299

LINO PADRON RIVERA,

Petitioner,

vs.

THE PEOPLE OF PUERTO RICO, EX REL. LUIS A. CASTRO.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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SUPREME COURT OF THE UNITED STATES

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No. 299

LINO PADRON RIVERA,

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THE PEOPLE OF PUERTO RICO, EX REL. LUIS A. CASTRO,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Lino Padrón Rivera, prays a writ of certiorari to review the judgment of the Circuit Court of Appeals, First Circuit, entered on April 28, 1944, in the

cause entitled Lino Padrón Rivera *versus* The People of Puerto Rico ex rel. Luis A. Castro (No. 3888), affirming judgment of the Supreme Court of Puerto Rico, which modified judgment of the District Court of San Juan, Puerto Rico.

The term for filing petition for a writ of certiorari shall expire on July 28, 1944. 28 U. S. C. A. 350.

Summary Statement.

The Attorney General of Puerto Rico, because of the importance of the question and the public interest involved, authorized respondent Luis A. Castro to file his complaint in the nature of a quo warranto proceeding against petitioner Lino Padrón Rivera to investigate the title or right of petitioner herein to the office of Secretary of the Capital of Puerto Rico.

Respondent Luis A. Castro assailed on several grounds petitioner's appointment to, and right to hold the office of secretary of the Government of the Capital (City Clerk of San Juan). After a hearing, the District Court of San Juan, where the quo warranto proceedings had been filed, held, as a matter of law, that petitioner's status as member of the Insular Legislature did not invalidate his subsequent appointment as City Clerk,[1] inasmuch as municipal offices are not included within the meaning and scope of the prohibition contained in Section 30 of the Organic Act of Puerto Rico.[2]

The District Court, nevertheless, found, as a matter of fact, that when petitioner was appointed to said municipal office, there was no vacancy therein which could be filled, because respondent Castro was then lawfully holding the

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[1] R. 20.

[2] 39 Stat. 951; 48 U. S. C. A. 737.

office, and that there had been no abandonment of said office by respondent prior to the appointment thereto of petitioner.[3] Judgment of ouster was, therefore, entered.[4]

An appeal having been taken to the Insular Supreme Court, the judgment was affirmed in substance,[5] although the said Supreme Court disagreed as to the reasons for the judgment. It held that "the conclusions (of fact) reached by the lower court are clearly erroneous and insufficient in themselves to support the judgment appealed from",[6] but that, as an appeal is taken from the judgment and not from the grounds thereof, it was the court's duty to affirm, if, in its opinion, there were other grounds to justify the judgment. The Insular Supreme Court then proceeded to decide, thereby reversing the District Court's ruling, that petitioner could not legally be appointed to the office of City Clerk of San Juan, even though the latter is a municipal office, because such dual office holding is "in violation of the provisions of the Organic Act".[7] The court also declared that Section 30 of said Act prohibits the holding, by a member of the Insular Legislature, of offices not only in the insular government but altogether in any of the various municipal governments.

The District Court's Opinion. The grounds of the District Court's decision appear very lucidly in its opinion.[8] Said court had, in a prior case, decided the same question, another magistrate having written the opinion.[9] It had held that a person who holds the office of senator in Puerto Rico is entitled to be appointed to, and hold an adminis-

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[3] R. 26, 27.
[4] R. 46.
[5] R. 58.
[6] R. 53.
[7] R. 57.
[8] R. 8.
[9] R. 13.

trative office in the city government of San Juan. The District Court, after a review of the authorities and decisions, concluded, in the instant case, that "the status of member of the legislative assembly (senator) of defendant does not incapacitate him to be appointed secretary of the Capital, nor to fill said office".[10]

The Supreme Court's Opinion. The Insular Supreme Court reasoned that, inasmuch as both the insular and the municipal governments in Puerto Rico "are in reality parts of a single governmental instrumentality—the Government of Puerto Rico",[11] even though they function "as distinct and separate entities",[12] in view of the fact that Section 30 of the Organic Law forbids the appointment of senators or representatives to any civil office *under the Government of Puerto Rico,* a senator cannot legally be appointed to a municipal office. The Supreme Court pointed out that municipalities are creatures of the Legislature, which can create new municipal subdivisions, or consolidate those already in existence. It also noted that the Legislature enacts the law governing the various municipalities, creates municipal offices and fixes or increases the salaries of municipal officers. These considerations led to the conclusion, the Court said, that the municipal governments "are integral parts of the Government of Puerto Rico, and therefore the civil offices in the municipalities are civil offices under the Government of Puerto Rico."[13]

Petitioner herein filed a petition for rehearing before the Insular Supreme Court, which was summarily denied.[14]

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[10] R. 20.
[11] R. 55.
[12] R. 55.
[13] R. 56.
[14] R. 59, 75.

An appeal was then taken to the Circuit Court of Appeals for the First Circuit,[15] and the necessary bonds—cost and supersedeas—were posted and duly approved.[16]

The Circuit Court of Appeals affirmed.[17] It noted the importance of the question presented, which involves the principles of public administration in the island,[18] and, after stating that the authorities are divided as to whether a municipal office is an office under the state government within the meaning of corresponding provisions of the state constitutions, indicated that "the better reasoning" [19] reaches the result adverse to petitioner's contention. It made a cursory examination of the legislative history of Section 30 of the Puerto Rican Organic Act, in an attempt to show that the validation of petitioner's city office holding would imply circumvention of the avowed purpose of Congress in ingrafting said Section 30 into the Organic Law, holding that the intention was "to remove from the thoughts of legislators any expectation of reward or personal advantage." [20]

Both the Insular Supreme Court and the Circuit Court of Appeals misconstrued the plain meaning of the statutory phrase in controversy, and ignored its true scope and its limited prohibition. Both courts heeded not, in the least, the persuasive force and effect of the weight of authority on the matter, definitely dissipative of first-impression doubts as to the underlying motive of the constitutional precept and as to the evil sought to be remedied.

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[15] R. 75, 76.
[16] R. 76.
[17] R. 84.
[18] R. 81.
[19] R. 82.
[20] R. 83.

Statement of Jurisdiction.

The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 299, sec. 1, 43 Stat. 938. (28 U. S. C. A. 347.)

The judgment of the Circuit Court of Appeals for the First Circuit was entered April 28, 1944.[21]

Question Presented.

Only one question is presented, involving the proper construction of a section of the Organic Law for Puerto Rico and, therefore, a question of importance related to public administration in an insular possession of the United States.

The only issue presented is whether Section 30 of the federal statute, passed by Congress in 1917 to provide a civil government for Puerto Rico, prohibits the appointment of petitioner herein, a Senator in the Insular Legislature, to the office of City Clerk of San Juan, the Capital of Puerto Rico.

It is the contention of petitioner that the Circuit Court of Appeals, First Circuit, erred manifestly in holding, contrary to the clear intent of Congress and to the letter and spirit of the statute, that Section 30 of the Organic Act for Puerto Rico forbids the appointment of members of the Insular Legislature to strictly municipal, as distinguished from insular, offices in the government of the island of Puerto Rico.

Petitioner contends that said Section 30, if properly construed in the light of the evils sought to be remedied by its enactment and with the aid of the context of the whole statute, does not prohibit the appointment of petitioner to a municipal office, such as is that of City Clerk of San Juan,

[21] R. 84.

and that the prohibition is directed solely to appointments to office in the Insular Government, as distinguished from the governments of the various municipalities.

Reasons Relied on for the Allowance of the Writ.

This case involves an important and far-reaching question of interpretation of a federal statute enacted to provide for an orderly, effective and republican type of government for an insular possession of the United States. The final decision herein will affect each and every one of the seventy-seven municipal governments now organized and in existence in the Island of Puerto Rico.

Both the Circuit Court of Appeals and respondent The People of Puerto Rico agree that the question presented "is one of importance to Puerto Rico, affecting as it does the essential principles of public administration."[22] The court below noted specially this feature of the case.[23]

The extension to municipal offices of the statutory prohibition, directed to legislators, against office-holding under the Insular Government deprives the members of the Insular Senate and House of Representatives of their right to occupy posts in the various city governments of the Island, and, instead of removing "from the thoughts of legislators any expectation of reward or personal advantage,"[24] subjects them to stronger undue influences from private interests willing to offer salaried opportunities. Legislators in Puerto Rico do not receive an annual salary. They receive compensation at the rate of $7 per day for the number of days of each regular session, and mileage at the rate

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[22] Brief for the People of Puerto Rico, p. 5 (Filed in the Circuit Court of Appeals).

[23] It said, inter alia: "The People of Puerto Rico, however, have filed a brief and argued the case before us because they say it is a question of importance involving the principles of public administration in the island." R. 81.

[24] Opinion of the court below, R. 83.

of ten cents per kilometer in going to and returning from the Capital.[25] And the Legislative Assembly convenes annually, beginning on the second Monday in February of each year and closing not later than April 15 following.[26] Special sessions may not last more than fourteen days.[27] Therefore, legislators receive, at the most, less than five hundred dollars compensation yearly. A construction of the Organic Act which deprives them of an opportunity to earn their subsistence certainly does not aid in removing from their thoughts "any expectation of reward or personal advantage."

The problem is also presented as to the effect on the various municipal governments, which heretofore have had legislators appointed to city positions, with reference to the validity of said officers' actions and official utterances and behavior. The judgment of the Circuit Court of Appeals apparently determines nullity *ab initio* of such appointments.[28] Should the decision thus rendered be upheld, grave consequences will undoubtedly ensue, nay, even disorder and chaos, resultant from litigation urging invalidity of municipal contracts, bonds, etc.

Petitioner herein earnestly believes, and respectfully submits, that the Circuit Court of Appeals for the First Circuit has so far sanctioned a departure by the Supreme Court of Puerto Rico from the accepted and usual course of construction of a federal statute as to call for an exercise of this Court's power of supervision, to the end that a substantial question of interpretation of a federal law, governing the public administration norms of an insular possession, be authoritatively settled.

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[25] Organic Law for Puerto Rico, Sec. 31, 48 U. S. C. A. 820.
[26] Ib., Sec. 33.
[27] Ib.
[28] R. 81.

Wherefore your petitioner respectfully prays that a writ of certiorari be granted herein and the judgment of the Circuit Court of Appeals for the First Circuit, in the case entitled *Lino Padrón Rivera vs. The People of Puerto Rico ex rel. Luis A. Castro*, No. 3888, affirming the judgment of the Supreme Court of Puerto Rico which modified that of the District Court of San Juan, be reversed.

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I hereby certify that the foregoing petition, in my opinion, is well founded and entitled to be considered by this Court, and, further, that it is filed in good faith and not for the purpose of delay.

San Juan, Puerto Rico, July 19, 1944.

F. Fernandez Cuyar.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions Below.

The opinion of the District Court of San Juan (rendered September 8, 1941) is not reported, but will be found in the record herein (P. 8, 46). The opinion and judgment of the Supreme Court of Puerto Rico (dated July 29, 1942) is reported officially in 60 Puerto Rico Decisions 798 (Spanish Edition). The corresponding volume of the English Edition has, as yet, not been issued. Said opinion and judgment may be found in the record herein (P. 47, 58). The opinion of the Circuit Court of Appeals, First Circuit, is reported in 142 F. (2d) 508, and is also in the record herein (P. 79, 83).

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code of the United States, as amended by the Act of Congress of February 13, 1925, c. 229, 43 Stat. 938. 28 U. S. C. A. 347.

The judgment of the Circuit Court of Appeals for the First Circuit was entered on April 28, 1944. (R. 84.)

Statement.

A statement of the case is made in the petition, *ante*, pages 2 to 5.

The grounds for the petition, concisely stated, consist in the following:

The judgment of the Circuit Court of Appeals, First Circuit, is based on a clearly erroneous interpretation of Section 30 of the federal statute governing the territory of

Puerto Rico. The pertinent part of the said statute is as follows:

> "No senator * * * shall, during his term of office, be appointed to any civil office under the Government of Puerto Rico * * *[29]

The Circuit Court of Appeals held that the above quoted prohibition included, within its meaning and scope, not only offices properly appertaining to the Government of Puerto Rico itself, but altogether all municipal and city offices, thereby in effect ignoring, and even destroying, the obvious differentiation which the statute clearly makes between the insular and the municipal governments functioning in Puerto Rico ever since the federal statute went into effect, in the year 1917.[30]

Such error was caused by a misconception, by the Court below, of the reasons underlying the statutory prohibition. The effects of the judgment, however, will seriously prejudice and jeopardize municipal and city activities, enterprises and official action, heretofore developed and performed, at least in part, by members of the Legislature acting in fulfillment of their duties as local officers, while the Legislature is not in session.

Petitioner being specially and directly affected, prays the issuance of the writ and the eventual reversal of said judgment as being contrary to the clear intent of Congress, which only forbade the appointment of members of the Insular Legislature to offices in the Insular Government, not in the various municipalities.

The Error Assigned.

The Circuit Court of Appeals for the First Circuit erred in holding that Section 30 of the Organic Law for Puerto

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[29] The section in full is set forth in the Appendix, infra, p. 27.

[30] The Organic Law for Puerto Rico was passed by the Congress March 2, 1917.

Rico prohibits the appointment of petitioner, or of any member of the Insular Legislature, to the post of City Clerk of San Juan, or to any other city or municipal office in Puerto Rico.

The statutory precept, when properly construed in the light, principally of its clear phraseology and secondarily of the evils sought to be remedied by its enactment, enjoins the appointment of senators and representatives *only* to offices in the Insular Government, the central government created specifically in the statute. Such limited prohibition cannot be extended or broadened, through the guise of judicial interpretation, to cover other and different offices in the local or municipal governments.

Argument.

The prohibition that no legislator shall be appointed to any civil office under the Government of Puerto Rico rests upon the preservation and protection of the basic constitutional principle of our democratic governments which ordains the separation of powers between the different departments of the government. A person should not be in a position where he can enact and construe the laws. He should not be a lawmaker and a judge at the same time. The statutory interdict certainly does not mean that a person may not receive two compensations or salaries at the same time, inasmuch as this evil is guarded against by other provisions of our Organic Law. (See Section 34, paragraph 13, Appendix, infra, p. 27).

Referring to the rationale of a constitutional precept identical to ours, in *Chenovich* v. *Chambers*, 164 Pac. 428, the court expressed itself as follows:

> "The amended section is much more sweeping than its progenitor, for it applies to all offices, other than elective offices, and forbids the holding or accepting by

> a senator or assemblyman of any office, trust, or employment, '*under this state*', during the terms for which he shall have been elected. The purpose of the amendment, as stated by one of its proponents in the official argument addressed to the electors, was to bring the Constitution into harmony with the American theory of government that 'those who execute the laws should not be the same individuals as those who make the laws', and for the further reason 'that a legislator who is holding a position on the state payroll is too apt to allow the wishes of the one responsible for his appointment to decide the manner in which his vote shall be cast'. A man in such a position is, to say the least, not in that independent frame of mind which should be possessed by the ideal legislator."

Similar words were used by the court in *Laymel* v. *Johnson*, 288 Pac. 858, ratifying the decision in the *Chenovich* case, *supra*.

Previously, in *Sallewhite* v. *Gamison*, 168 Pac. 1053, the following statement had been made:

> "Upon the merits of the whole case we are of the opinion that the intent and purpose of the framers in proposing and of the people in adopting, this constitutional provision, was the preclusion of members of the lawmaking branch of the state government from seeking or holding any appointive office or employment in or under any department or subdivision of the general state government, by the seeking or holding of which his independent action as such member of the Legislature might in any wise be influenced or affected."

In view of the evil sought to be remedied by the enactment of this constitutional precept, how can it possibly be imagined that the discharge of the duties of the office of City Clerk of San Juan, the functions of which are merely clerical (to draw up the minutes of the Board of Commis-

sioners of San Juan, to bind and preserve the minute books, to have the custody of the general records and to certify the ordinances and the resolutions of the Board of Commissioners; Section 37 of Act No. 99 of 1931, Laws 1931, p. 646, Appendix, infra, p. 28) conflicts in any way with the legislative functions of the office of senator? Where the reason underlying the rule fails, the rule should not be deemed applicable. The San Juan City Clerk does not construe the laws enacted by the Legislative Assembly of Puerto Rico, nor enforces, nor makes them. There are no conflicting powers.

It is well to remember in this connection that constitutional provisions, such as those contained in Section 30 of the Organic Act for Puerto Rico, have always been construed restrictively, so that the eligibility of the appointee has always been upheld. It was so indicated by the Supreme Court of Tennessee in *Wallace* v. *Grubb*, 289 S. W. 531, as follows:

> "• • • constitutional and statutory provisions such as these should be narrowly construed so as to uphold the eligibility of the appointee wherever possible."

The Supreme Court of Kentucky, in *Howton* v. *Morrow*, (1937) 106 S. W. (2d) 81, likewise said:

> "All persons are equally eligible for office unless they are excluded by some constitutional or legal disqualification, and consequently, provisions in statutes and constitutions imposing restrictions upon the right of a person to hold office should receive a liberal construction in favor of his eligibility."

It being manifest, therefore, firstly, that the aim of the constitutional provision under consideration is no other than to prevent the exercise of conflicting powers between

any of the departments of the government (executive, legislative and judicial), and, secondly, that these provisions should be restrictively construed, let us inquire whether municipal civil offices are civil offices under the Government of Puerto Rico. The Court below cited in its opinion, upholding the affirmative, among others, the case of *State* v. *Valle*, 41 Mo. 29. We must call the attention of this Court to the fact that the case of *State* v. *Valle* has been, in substance and effect, reversed by that of *Briton* v. *Stiter*, 62 Mo. 370, where the Supreme Court of Missouri held that the mayor of the city of St. Louis was not holding an office "*under the state*" within the meaning of Section 15 of Article 4 of the Missouri Constitution, which prohibits the appointment of a senator or representative to a civil office "*under the state.*"

In connection with the decisions from Missouri, it is convenient to state that, after the decision in the case of *Briton, supra*, modifying that of *State* v. *Valle*, the Missouri Constitution was amended on November 30, 1875, the provision being modified as follows:

> "No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any office under this state, *or any municipality thereof;*"

It is clear, therefore, that in order that the constitutional prohibition could be construed as covering, not only civil offices under the government of the state, but also municipal civil offices, it was necessary to amend the constitution and to expressly forbid it, for, if the prohibition were not express, the same would not include municipal civil offices. Consequently, neither the case of *State* v. *Valle*, *supra*, nor subsequent decisions of the Supreme Court of Missouri, uphold in any respect the judgment below. On the contrary, they openly conflict. See *Carpenter* v. *People, ex rel. Tilford*, 5 Pac. 828, 836.

The court below notes that municipalities are created by the Legislature of Puerto Rico, and that the Legislature can create new municipalities and consolidate and reorganize them and provide and repeal laws and ordinances for their government (48 U. S. C. A. Sec. 731, et seq.), and concludes therefrom that municipal governments are an integral part of the Government of Puerto Rico, and that municipal and city civil offices are therefore civil offices under the Government of Puerto Rico. (R. 81).

We submit that the fact—true and correct—that municipal governments are an integral part of the Government of Puerto Rico, does not justify the conclusion that municipal and city civil offices are civil offices under the Government of Puerto Rico. This is a *non sequitur*, as we shall see further on. The salaries of municipal and city officers are fixed by the respective municipal assemblies in Puerto Rico, with the sole exception of the Government of the Capital, where a small number of officers have their salaries fixed by statute. (See "An Act establishing a system of local government for the municipalities of Puerto Rico," Act No. 53 of 1928, Laws 1928, pages 334-402, especially Sections 6, 10, 16, 18, 26). And, even in this latter case, most of the officers and employees are paid salaries fixed by the Board of Commissioners of the capital. See Section 18 (5) of Act No. 99 of 1931 (Laws 1931, p. 636). But, even admitting as true all the facts mentioned by the court below they are not sufficient to convert a municipal office into an insular office within the purview of the constitutional provision contained in Section 30 of our Organic Act.

> "The mere fact that the legislature created the office in question and provided that the Governor should appoint its first incumbent in no way affects the character of the office as a mere municipal office",

said the Supreme Court of Alabama, in *State* v. *Lane*, 62 So. 31, expressing itself further as follows:

> "In other words, if a charter is, by the legislature, created for a city, and in that charter a certain office for that city is created, and by that charter only municipal duties are attached to that office, then it is merely a municipal office and its occupant only a municipal officer."

On August 1, 1939, the Supreme Court of Florida had before it for consideration the case of *Le Tour* v. *Stone*, 190 So. 704, which dealt with a charge filed against a sheriff of a county for violation of a statutory provision prohibiting "any officer of the state" from being paid a compensation greater than that to which he was entitled in accordance with his office. The objection was raised that said county sheriff was not a state officer, and it was so held by the Florida Supreme Court citing the case of *Attorney General, ex rel. Wilkins* v. *Connors*, 27 Fla. 329, 9 So. 7. This latter case is highly illustrative in the controversy at bar. We must call the attention of the Court to the fact that a constitutional provision was being construed which also contained the phrase "under the government of the state" similar to ours, in contrast with the phrase "in the Government of Puerto Rico". The opinion, in its pertinent part, reads as follows:

> "It is contended for the respondent that Section 1 of Chapter 3607, entitled 'An Act to Amend Section 9 of an Act to dissolve Municipal Corporations', etc., approved February 12, 1885, which provides among other things that 'it shall be the duty of the sheriff for the county in which such city shall be situated to perform the duties of marshal of such provisional municipality, and to appoint, subject to the approval and removal by the board, such number of policemen as

may be authorized by the board', is obnoxious to that clause of Section 15, Article 16 of the Constitution of 1885 which provides that 'no person shall hold or perform the functions of more than one office under the government of this state at the same time'. And in this connection it is urged by the respondent that a city marshal is a state officer, in the sense of the constitutional provision invoked, and that the performance of the duties appertaining to his office upon a sheriff of a county, comes within the constitutional inhibition above quoted. With this contention of the respondent's counsel we cannot agree, and it seems to us that the plain meaning of the language used in the clause of the Constitution invoked clearly negatives this theory. The language of the Constitution is: 'No person shall hold or perform the functions of more than one office under the government of this state at the same time'. The inhibition is aimed solely and entirely against offices held under, or whose duties appertain to, the government of the state. After careful and exhaustive search, we have been unable to find any authority that holds that the government of municipalities form any part of the government of the state as such, considered in the broad sense of the term state government. The government of the state, as such, is reared upon and provided for in all of its departments by the Constitution, but nowhere in our Constitution are the government of municipalities, or their officials, either created or established as any part of our state government, but their very creation together with all provisions for their government, are reserved to the legislative branch of the state government, as erected by Constitution. Section 8, Article 8, of the Constitution provides that 'the legislature shall have power to establish and to abolish municipalities, to provide for their government, to prescribe their jurisdiction and powers, and to alter or amend the same at any time'. From this provision it will be seen that to the legislature is reserved the power, not only to create, but to abolish, municipal governments. It could hardly be contended that our Con-

stitution intended to clothe the legislature with the power to wipe out of existence any part of the great framework of state government, yet such would be the inference were we to hold that the government of municipalities formed, strictly speaking, any part of the government of the state. * * *

"Again, in enumerating what courts shall constitute the judicial power 'of the state', the Constitution (Art. 5, Sec. 1), says, 'the judicial power of the state shall be vested in a supreme court * * *'. Had it been the intention of the framers of our Constitution to have the officers of a municipality considered as officers 'under the government of the state', certainly in this specific mention of the courts in which the judicial power of the state was to be lodged, so important a municipal official as one exercising the jurisdiction and powers of a court within the municipality would have been specially included as part of the state's judicial power. While the officers of a municipality can be and are in a confined and limited sense considered as officers of the state, in that they are recognized by the laws of the state as being clothed with certain official powers and duties to be exercised inside the lines of certain circumscribed territorial limitations within the state, and, in the proper exercise of such official powers and duties, are protected by the strong arm of the state's government, still they are incidents, auxiliaries, and agencies only in their relations to the state's government, and have no place in the state's government as such, considered in its broad and comprehensive sense. Their official authority and power is confined strictly within the territory of their municipality, and is further limited to things that pertain strictly to municipal and not state's affairs. And if the legislature of the state should exercise its constitutional power to abolish the government of every municipality within her borders, the state's government, as contemplated by the constitution, would remain as such, just as complete and perfect as before, though perhaps not so efficient in the localities affected by such abrogation."

It should be observed that the reasoning of the Supreme Court of Florida in the case above transcribed *in extenso*, adequately refutes and answers the indications of the Court below, in its opinion, concerning the relations between the municipal and insular governments.

The general trend of the decisions is emphatic, strong and undeniable on this point. In Arkansas, it has been decided that:

> "The great weight of authority, if not the unanimous voice of authority, is to the effect that municipal officers are not to be regarded as officers who are affected by the constitutional prohibition against holding two offices at one and the same time." *State ex rel. Murphy* v. *Townsend*, 79 S. W. 782.

In Mississippi it has been held that:

> "It is therefore undeniably true, as maintained by counsel for the defendant in error, that the words 'civil office under the state' contained in the article of the Constitution above referred to, import an office in which is reposed some portion of the sovereign power of the state, and, of necessity having some connection with the legislative, judicial or executive departments of the government. It is the conclusion which is the necessary and logical result of the theory of government itself." *Shelby* v. *Acorn*, 72 Am. Dec. 169.

Attention should be called to the fact that most of the decisions and authorities hold that constitutional provisions which merely speak of offices, without specific reference to state or municipal governments, must be construed as applicable to offices under the government of the state or territory and not to municipal offices. See the lengthy note in L. R. A. 1917A, p. 233:

> "Most courts which have expressed their views on the subject are of the opinion that general constitutional provisions, not specifying any particular offices,

> or purporting to be applicable to the offices of any particular governmental subdivision, apply only to state offices."

Such is also the construction where the prohibition enjoins the exercise of the powers pertaining to a certain department of the government by an officer from any of the other departments, the rule being that, when the Constitution mentions a department, the reference is solely and exclusively to government departments of the state (L. R. A. 1917A, 234). The same construction is adequate where the constitutional precept mentions "lucrative office," "civil office of emolument" and "office of trust or profit." See L. R. A. 1917A, pp. 238-250.

If such is the proper construction when the Constitution speaks generically of offices, the conclusion is unavoidable that municipal offices should be excluded, where, as in Section 30 of the Organic Act of Puerto Rico, the word office is expressly restricted to such offices as fall under the Government of Puerto Rico. And we do not think justifiable a decisive distinction between the phrase *"in the Government of Puerto Rico"* and the phrase *"under the Government of Puerto Rico"* to the extent of claiming that under the second a different result is attained. We have already cited a number of decisions construing the phrase *"under the government of the state"* in which it was held that such phrase does not include municipal offices. In addition to those cases, the opinion should be studied in the case of *Bothwell* v. *Powell*, (1931) 43 S. W. (2d) 495, where the point was discussed and in which there was involved a member of the Tennessee Legislature who was appointed at the same time member of the Board of Education of a county of the state. Deciding that the holding of both offices was legal and valid, the Supreme Court of Tennessee said:

> "Perhaps the weight of authority is to the effect that constitutional provisions similar to ours apply to

state officials and would not render a municipal officer ineligible to hold a state office."

In *State* v. *Lane*, 62 So. 31, a historical study is made of the development of the government in cities and towns of England, where municipal officers were never held to be officers of the Royal Government. The opinion in said case is interesting. We quote from its pertinent part, as follows:

> "In truth, we do not see how, unless the historical development of municipal law is entirely discarded, it can be held upon sound reasoning that in a state with a constitutional and statutory history like our own, a mere municipal officer can be held to be, within the meaning of our constitution, an officer of the state.
>
> • • • • • • •
>
> "When the people of a town met in their townhouse to pass laws for the regulation of the affairs of the town only and to select officers for the town only, they knew that, while they were the subjects of England and while their town was an English town, they were acting only for the town; that the laws which they passed were mere town laws, and that the officials selected by them held offices under them, and that they were not officers of the Government of England or their colony. When, after the establishment of the Federal Government, in drafting their constitutions, they referred in mere general terms to an officer of a state, they knew that they were not referring to mere municipal offices."

It seems obvious that if the Congress of the United States had meant to include municipal offices within the prohibition of Section 30 of the Organic Act for Puerto Rico, it would have been entirely easy for it to do so without restricting the offices to those held *under the Government of Puerto Rico*. This is clearly shown, by analogy, by a reading of the decision of the Supreme Court of New Jersey in *Klair* v. *Bacharach*, 159 Atl. 538, where a provision was construed

which prohibited members of the "Board of Public Utilities Commissioners" from holding another lucrative office *under the government of the state*. Said Court expressed itself as follows:

> "It will be observed that the interdiction of the statute is not against the holding of any other office, or of any other public office, or of any other office of profit or trust, but against the holding of any other office of profit or trust under the Government of this state. The legislature confined its prohibition to offices 'under the government of this state.' If the legislature had intended to exclude the holding of any other office of profit or trust, it could easily have done so by the use of appropriate language. It would have been easy to provide that the incumbent should not hold any other office, either under the government of this state or of any municipality. It must be assumed, therefore, that the legislature intended the limitation to extend no further than the language used reasonably imports."

In *Commonwealth* v. *Joyce*, 139 Atl. 742, the Supreme Court of Pennsylvania construed a constitutional provision identical to ours, and which reads:

> "No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office *under this commonwealth* • • •"

A state senator was appointed "Director of the Poor" for a district which was made up of parts from two counties. The holding of both offices was contested, and in deciding that the office of "Director of the Poor" was not an office under the State Government, within the meaning of the constitutional prohibition, the Supreme Court of Pennsylvania expressed itself as follows:

> "The respondent receives a salary from the poor district, and therefore the office of poor director which he holds is one of profit. The question then arises, is

it a 'civil office under this commonwealth' or an office of profit 'under this state'? The court below determined, two of its members not sitting, and another dissenting, that the office is one under the state, and therefore entered a judgment of ouster against respondent. Challenging this conclusion, he appeals, and we are of opinion that his appeal must be sustained.

"The interdiction of the statute is not against holding any office, or any public office, or any office of profit, but against being appointed to any civil office under this commonwealth or holding any other office of profit under this state. The Legislature, therefore, confined to state offices the offices which might not be held; had it desired to exclude the holding of any other office, it would have been easy to say so, or, had it wished to include municipal offices within the ban, that term could have been used. The office in question is a purely municipal one. *Commonwealth* v. *Sharetts*, 231 Pa. 525, 80 Atl. 1100. The mere fact that the Legislature created the office in no way affects its character as one merely municipal. 43 C. J. 597, par. 974."

See also *Attorney General, ex rel. Trudel*, v. *Bond*, 124 Atl. 553. We have stated before that it seems obvious that if the Congress had meant to make this prohibition applicable to municipal offices, it would have said so expressly, just as was done by the people of the State of Missouri when amending their Constitution by adding the words "or any municipality thereof". Our conviction grows stronger when we notice that the very Organic Act of Puerto Rico, in its various sections, distinguishes between municipal governments and the insular government, the whole context of the law thereby indicating that the Congress considered municipal governments as governmental entities distinct from the insular government. This is ratified by Section 3 itself, from which we quote as follows:

"* * * all bonds issued by the Government of Puerto Rico, or by its authority, shall be exempt from taxation

by the Government of the United States, or *by the Government of Puerto Rico, or of any political or municipal subdivision thereof* • • •"

How is it possible to construe the phrase "Government of Puerto Rico", when used in Section 30, as including municipalities, and at the same time restrict the same phrase "Government of Puerto Rico", when used in Section 3, as excluding municipalities or any political subdivision of the government? If in Section 30, as construed by the Court below, using the phrase "Government of Puerto Rico" the Congress meant to include the municipal governments, it does not seem logical that the same Congress, in Section 3, should employ the phrase Government of Puerto Rico and add thereto "*or of any political or municipal subdivision thereof*". It would have been sufficient for Section 3 to merely say the Government of Puerto Rico.

In another part of Section 3, the Organic Act speaks of insular and municipal governments. Section 20, when referring to the duties of the auditor, says: "of the Government of Puerto Rico and of the municipal funds", "Government of Puerto Rico or the municipalities", "various departments and bureaus of the Government and of the various municipalities". The Congress, therefore, repeatedly revealed, throughout the Organic Act, its intention of making a distinction between the insular government and the various municipal governments. There is no doubt, therefore, that if it had meant to include municipal officers within the prohibition of Section 30, it would have done what it did in other sections, that is, to use the phrase "Government of Puerto Rico or the municipalities".

At least, the precedent from Missouri is significant in this connection. And the fact must not be overlooked that it should be presumed that the congressmen who drafted the Organic Act for Puerto Rico were acquainted with the

decisions from their respective states, which we have cited above, to the effect that the phrase "under the government of the state" does not include municipal offices. And, certainly, the congressmen from Missouri did know that in their state they had to amend the Constitution in order to include municipal offices within the prohibition of dual office-holding by legislators.

Conclusion.

For the reasons stated, it is respectfully submitted that the judgment of the Circuit Court of Appeals for the First Circuit is clearly erroneous; that the doctrine or rule therein established is tantamount to judicial legislation, not based on an actual or real danger; that the Congress never intended, nor, directly or indirectly, expressed any intention, to prohibit the various municipal and city governments in Puerto Rico from appointing legislators to posts in said local governmental units; and that, consequently, the writ of certiorari herein prayed for should be ordered to issue forthwith, and, eventually, the judgment of the Circuit Court of Appeals for the First Circuit should be reversed.

July 19, 1944.

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APPENDIX.

I.

Organic Act for Puerto Rico (48 U. S. C. #819). Section 30:

"The terms of office of senators and representatives elected at any general election shall be four years, commencing on the 2d. day of January following the date upon which such election was held. In case of a vacancy in the office of any senator or representative occurring by reason of death, resignation, or otherwise, the Governor, upon the recommendation of the central committee of the political party of which such senator or representative was a member, shall appoint a senator or representative from such political party to fill such vacancy who shall hold office for the remainder of the term for which his predecessor was elected. No senator or representative so elected or appointed shall, during his term of office be appointed to any civil office under the Government of Puerto Rico, and no such senator or representative shall be eligible for appointment to any office created during his term of office until the expiration of two years after the date upon which his term of office shall have expired."

II.

Section 34 (48 U. S. C. A. #838):

"Except as otherwise provided in this chapter, no law shall extend the term of any public officer, or increase or diminish his salary or emoluments after his election or appointment, nor permit any officer or employee to draw compensation for more than one office or position."

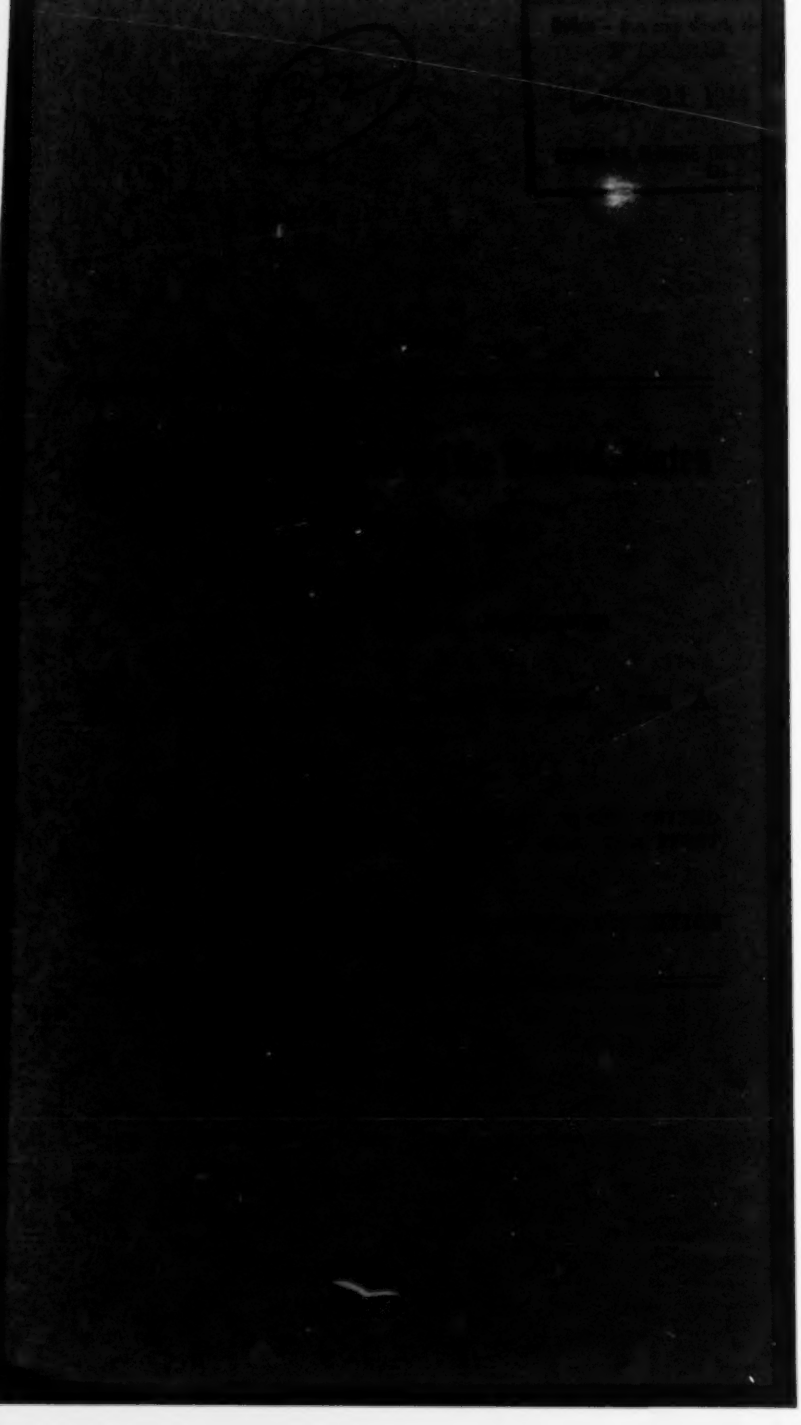
III.

Act No. 99 approved May 15, 1931 by the Legislative Assembly of Puerto Rico, to establish a special government

for the Capital of Puerto Rico, and for other purposes—Section 37 (Laws 1931, p. 646):

"The secretary shall have all the powers, functions and duties in connection with the Capital as are vested in the Executive Secretary of Puerto Rico in connection with the Insular Government, subject to the provisions of the Organic Act and the laws of Puerto Rico. He shall be the secretary of the Board of Commissioners and of the Administrative Board. He shall have charge of the general archives of the Capital; shall keep the minutes of the Board of Commissioners, and shall certify the ordinances and resolutions adopted by said Board; and shall perform all the duties and obligations imposed on him by this Act, by other laws in force, and by the ordinances and resolutions of the Capital. He shall have charge of the civil registry of the Capital.

The secretary shall be a person of experience in the functions of a municipal secretary, and shall receive an annual salary of four thousand five hundred (4,500) dollars."



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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 299

LINO PADRON RIVERA, PETITIONER

v.

THE PEOPLE OF PUERTO RICO EX REL. LUIS A. CASTRO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE PEOPLE OF PUERTO RICO IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court of San Juan, Puerto Rico (R. 8–45) is not reported. The opinion of the Supreme Court of Puerto Rico (R. 47–58) is reported in 60 Puerto Rican Decisions 798 (Spanish Edition); the corresponding English opinion is not yet officially reported. The opinion of the Circuit Court of Appeals (R. 79–83) is reported in 142 F. (2d) 508.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on April 28, 1944 (R. 84). The petition for a writ of certiorari was filed on July 28,

1944. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 43 of the Act of March 2, 1917, as amended (48 U. S. C. § 865).

QUESTION PRESENTED

Whether the office of Secretary of the Capital of Puerto Rico is a "civil office under the Government of Puerto Rico" within the meaning of Section 30 of the Organic Act of Puerto Rico, which prohibits the appointment of Insular legislators to such an office during their term of office.

STATUTE INVOLVED

Section 30 of the Organic Act of Puerto Rico (Act of March 2, 1917, c. 145, § 30, 39 Stat. 959, as amended by the Act of June 1, 1938, c. 308, 52 Stat. 595; 48 U. S. C. § 819) is set forth in the Appendix, *infra*, p. 14.

STATEMENT

On September 11, 1931, respondent Luis A. Castro was appointed Secretary of the Capital of Puerto Rico by its City Manager, and on January 4, 1937, while still holding that office, was given a further appointment to the same post by the new City Manager who had been elected in November 1936 (R. 51). On February 17, 1941, while Castro was still holding office, the City Manager who had been elected in November 1940 ap-

pointed petitioner, Lino Padron Rivera, to the office of Secretary of the Capital (R. 10, 12, 49, 51). Petitioner was then a member of the Senate of Puerto Rico to which he had been elected on November 5, 1940 (R. 9).[1] On April 21, 1941, petitioner took the oath of office as Secretary, and on the next day, Castro, who had continued to exercise the functions of Secretary, surrendered physical possession of the office to petitioner (R. 49). On May 1, 1941, under authorization of the Attorney General of Puerto Rico (R. 4, 57), a *quo warranto* proceeding in the District Court of San Juan, Puerto Rico, was brought against petitioner by the People of Puerto Rico at the instance of Castro to determine whether title to the Office of Secretary was in petitioner or Castro (R. 8). It was alleged that petitioner's appointment was void because Castro was filling the office at the time of petitioner's appointment, and because Section 30 of the Organic Act (prohibiting the appointment of a senator "to any civil office under the Government of Puerto Rico") rendered petitioner ineligible to hold the office in question (R. 8–9).

After a trial, the district court held that an Insular Senator may be appointed Secretary of the Capital, his acceptance thereof constituting a resignation of his seat in the Senate (R. 13–20), but that

[1] The term of an Insular Senator is four years. (Organic Act, Sec. 30; 48 U. S. C. § 819).

petitioner's appointment was invalid because there was then no vacancy and that Castro had not abandoned his office to petitioner (R. 26–27). The court declared Castro entitled to the office, and entered a judgment of ouster against petitioner (R. 45, 46).

The Supreme Court of Puerto Rico held, on appeal that neither petitioner nor Castro had a right to the office (R. 57–58). That court ruled that after November 1940, Castro held office at the will of the new City Manager and until a successor was designated (R. 51–52;[2] that Castro had voluntarly surrendered the office to his successor (R. 52–53); but that Castro had standing to maintain the *quo warranto* proceeding because he "does not ask to be put in possession of the office" and because the Attorney General authorized the proceeding "due to the public interest involved" (R. 57). As for petitioner, the court held that Section 30 of the Organic Act prevented him, as a Senator in the Insular legislature, from being legally appointed Secretary of the Capital, because that was an office "under the Government of Puerto Rico" (R. 56, 57). The Supreme Court held, therefore, that

[2] The Supreme Court of Puerto Rico had shortly theretofore held that the official term of office of City Manager is four years. *De Castro* v. *Board of Commissioners*, 59 P. R. R. 673, affirmed 136 F. (2d) 419 (C. C. A. 1), affirmed 322 U. S. 451. The City Manager appoints the Secretary of the Capital "for the term for which [the appointing officer] is appointed" (Act No. 99, Laws of Puerto Rico, 1931, Sec. 39), and a new City Manager was elected in November 1940 (R. 51).

petitioner's occupancy of the office since April 21, 1941, was unlawful, and that he should be required to vacate it. The declaration that Castro was entitled to the office, which had been included in the judgment of the district court, was omitted from that of the Supreme Court (R. 58). Petitioner appealed to the Circuit Court of Appeals for the First Circuit, which affirmed the judgment of the Supreme Court (R. 84).[3]

ARGUMENT

Section 30 of the Organic Act provides, in part, that "no senator or representative * * * shall, during his term of office, be appointed to any civil office under the Government of Puerto Rico." Both the Supreme Court of Puerto Rico and the court below construed this provision to prohibit the appointment of an Insular Senator to the office of Secretary of the Capital of Puerto Rico. We believe that the decision below is correct, and that further review is not warranted

1. Petitioner contends that the purpose of Section 30 was "to prevent the exercise of conflicting

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[3] Castro did not seek possession of the office in the Supreme Court of Puerto Rico (R. 57) and did not appeal from the ruling that he was not entitled to the office (R. 75–76, 81). Castro's right to office is therefore no longer an issue in the case. The People of Puerto Rico filed a brief and presented oral argument before the court below, in support of the conclusion of the Supreme Court as to petitioner's ineligibility for the office (R. 81).

powers between any of the departments of the government (executive, legislative and judicial" (Pet. 14–15), and argues therefrom that since the duties of local municipal officers, such as the Secretary of the Capital of San Juan, do not conflict with those exercised by an Insular legislator, such officers do not hold "civil office under the Government of Puerto Rico" within the meaning of Section 30 (Pet. 12–15). Both the premise and the conclusion are unsound.

The legislative history of the disqualification clause in Section 30 shows that its essential purpose was to prevent the prospect of appointment to a compensated government office from interfering with a legislator's impartiality and single-minded concentration upon lawmaking. On December 10, 1915, the House of Delegates of Puerto Rico presented a resolution to the President and Congress of the United States requesting the establishment of an autonomous and democratic government in that Island. In that resolution they declared (subsec. j) the "incompatibility of legislative duties with encumbrance of any other remunerative office or other office wherein jurisdiction is exercised," and urged that "members of both Houses * * * be prohibited from accepting any remunerative office during the term for which they may have been elected."[4] There-

[4] Hearings before Senate Committee on Pacific Islands and Puerto Rico, S. 217 (64th Cong., 1st Sess.), pp. 152, 153.

after, bills were introduced which subsequently became the Organic Act of Puerto Rico (Act of March 2, 1917, c. 145, 39 Stat. 951). The disqualification clause in Section 30 was explained as follows by the Senate Committee on Pacific Islands and Puerto Rico (S. Rep. No. 579, 64th Cong., 1st Sess., p. 3):

> The above provision, recommended by this committee as an amendment to the bill, is designed to remove from the thoughts of the legislators any expectation of reward or personal advantage in the enactment of legislation. A similar provision is found in most of our State constitutions and it has a wholesome effect.

The desirability of a prohibition against office-holding by legislators has also been recognized by many States, whose constitutions contain similar provisions. See *State* v. *Grover,* 102 Utah 41, 48–49, 125 P. (2d) 807, 810. The rationale of such provisions is that "a legislator who is holding a position on the state pay roll is too apt to allow the wishes of the one responsible for his appointment to decide the manner in which his vote shall be cast. A man in such a position is, to say the least, not in that independent frame of mind which should be possessed by the ideal legislator." *Chenoweth* v. *Chambers,* 33 Cal. App. 104, 106, 164 P. 428, 429; see also *Fyfe* v. *Mosher,* 149 Mich. 349, 350–351, 112 N. W. 725, 726; *Palmer* v. *State,* 11 S. D. 78, 80–81, 75 N. W. 818, 819; *State* v. *Grover,* 102

Utah 41, 125 P. (2d) 807, 811; *Satterwhite* v. *Garrison*, 34 Cal. App. 734, 736, 737, 168 P. 1053, 1054.[5]

These considerations are fully as cogent where the legislator is appointed to a municipal post in Puerto Rico as to a post in the central Insular Government. An Insular Senator receives compensation of only $7 for each day in session (Org. Act § 31; 48 U. S. C. § 820), while the Secretary of the Capital receives a yearly salary of $4,500 for four years (see Act No. 99, Laws of Puerto Rico, 1931, p. 648, § 37). To leave legislators eligible for the more lucrative post would defeat the purpose of Section 30 of the Organic Act "to remove from the thoughts of the legislators any expectation of reward or personal advantage" (S. Rep. No. 579, *supra*). As the court below observed (R. 83):

> Should a member of the Legislature receive or accept an appointment to a municipal post, there is the danger that he might lose that independence and impartiality of

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[5] The state authorities are divided as to whether a municipal office is an office "under the state government" within the meaning of similar provisions of the state constitutions. See cases collected in L. R. A. 1917 A, pp. 232–250, and Pet. pp. 17–24. It is submitted, however, as the court below observed, that the cases containing the "better reasoning" (R. 82), and those cited and followed most often by the state courts, support the view of the Supreme Court of Puerto Rico. See, *e. g. State* v. *Barham*, 173 La. 488, 137 So. 862; *Attorney General* v. *Common Council*, 112 Mich. 145, 70 N. W. 450; *State ex rel. Anderson* v. *Erickson*, 180 Minn. 246, 230 N. W. 637; *Shelby* v. *Alcorn*, 36 Miss. 273; *State ex rel. Kierskey* v. *Kelly*, 80 Miss. 803, 31 So. 901; *Satterwhite* v. *Garrison*, 34 Cal. App. 734, 168 P. 1053.

> thought and consideration desirable for him to possess. Where a measure involving the municipality is before the Legislature for consideration, the fact that a member thereof holds a municipal office might subject him to influences destructive of his independence of action.[6]

2. The Supreme Court of Puerto Rico, in construing Section 30, found that "municipal governments, due to the relations existing between them and the Insular Government and due to the supervision that the latter exercises over the former, are integral parts of the Government of Puerto Rico, and therefore the civil offices in the municipalities are civil offices under the Government of Puerto Rico" (R. 56). This construction of Section 30, which was also adopted by the court below (R. 81–82), is reasonable. Under the structure of Government created by the Organic Act and the decisions of the Insular courts, the "Government of Puerto Rico" consists of the various municipal governments as well as the central Insular Government. The present civil government of Puerto Rico, created by the Organic Act of March 2, 1917 (48 U. S. C. § 731 *et seq.*), consists of central or Insular Government, which has authority and jurisdiction over the

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[6] It is significant to note the trial court's finding that "the reasons for [petitioner's] appointment as secretary of the capital were of a political nature, that is, in order to fulfill political promises" (R. 26).

Island generally, and several Municipal Governments whose jurisdiction is limited to the territorial limits of the particular subdivision (Org. Act § 37; 48 U. S. C. § 821). The municipalities are subject to the plenary control of the Insular legislature, which may "create, consolidate, and reorganize [them] so far as may be necessary"; may "provide and repeal laws and ordinances therefor" (Org. Act § 37; 48 U. S. C. § 821); may "abolish any municipality and the officers provided therefor" (Org. Act § 29; 48 U. S. C. § 815); and may provide the manner in which the salaries of municipal officers may "be paid out of the municipal revenues" (Org. Act § 51; 48 U. S. C. § 799). According to the Supreme Court of Puerto Rico, the municipal corporation in Puerto Rico is "a part of the governmental machinery of the Island" (*San Millan* v. *Pension Board*, 45 P. R. R. 236, 237), and the relationship "between the municipalities and the territory is the same as that existent in the various states of the Union between their municipalities and the state." *Municipality of Manati* v. *Morales, Commn'r of Health*, 50 P. R. R. 789, 793. Similarly, the states have uniformly recognized that municipal corporations are local agencies of state government and constitute an integral part of the machinery of government. *United States* v. *Railroad Co.*, 17 Wall. 322, 329; *Barnes* v. *District of Columbia*, 91 U. S. 540, 544–545; *Klein* v. *New Orleans*, 99

U. S. 149, 150; *Worcester* v. *Street Railway Co.*, 196 U. S. 539, 548.[7]

There is special reason for holding the disqualification provision of Section 30 applicable to the office of Secretary of the Capital of Puerto Rico. The position occupied by the Capital of Puerto Rico and its officers in the Insular Government is not of a strictly local or municipal character, but is of general importance to the Insular Government.[8] As capital of Puerto Rico, its position is

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[7] Petitioner cites Section 3 of the Organic Act and argues that it indicates that the "Government of Puerto Rico" and "municipalities" of Puerto Rico are separate entities (Pet. pp. 24–25). However, an examination of Section 3 (48 U. S. C. §§ 741–741a, 745) reveals that it was necessary for Congress there to distinguish specifically between municipalities and the central government of Puerto Rico, since that section, *inter alia*, limits the authority of municipalities to issue bonds and the amount of public indebtedness which municipalities, as such, may incur. The Organic Act reveals no definite pattern as regards distinguishing municipal governments from the government of Puerto Rico. For instance, Section 20 of the Organic Act (48 U. S. C. §§ 786, 787, 790) first speaks of "revenues and receipts * * * of the government of Puerto Rico and of the municipal funds derived from bond issues" (§ 786), then speaks of the duties of the auditor with respect to "the government or any of its branches" (§ 787), and finally refers to "various departments and bureaus of the government and of the various municipalities" (§ 790). In one instance the phrase "fiscal concern of the government" is used to include municipal funds (§ 790).

[8] The office of the Secretary of the Capital was specifically created by the Insular Legislature of Puerto Rico (Act 99, Laws of Puerto Rico, 1931, Sec. 10). He is required to be

analogous to that of the District of Columbia, which this Court has characterized as "a selected area set apart for the enduring purposes of the general government, to which the administration of purely local affairs is obviously subordinate and incidental." *O'Donoghue* v. *United States,* 289 U. S. 516, 539; see *Federalist Papers,* No. XLIII. The office of Secretary of the Capital was thus properly held to fall within Section 30.[9]

"a person of experience in the functions of a municipal secretary," and his salary is fixed at $4,500 per year (*id.*, Sec. 37). The Secretary is required to call special meetings of the Board of Commissioners "when so directed by the Governor of Puerto Rico" (*id.*, Sec. 11); to keep the minutes of the Board of Commissioners (*id.*, Secs. 12, 37); to keep the general archives and civil registry of the capital; and to certify all ordinances and resolutions adopted by the Board (*id.*, Sec. 37).

[9] Since the Insular Legislature has plenary power and control of the municipalities of Puerto Rico, it is also arguable that even if the "Government of Puerto Rico" is construed to mean the central government only, exclusive of the municipal governments, a municipal office is nevertheless "under" the Government of Puerto Rico since it is subordinate and subject to that Government. Such a reading of the disqualification clause of Section 30 of the Organic Act is supported by the accepted meaning of the term "under" as "beneath" or "subject to" (Webster International Dictionary 1916 Ed.), and is also supported by a number of state decisions which hold that a municipal position is "under the state government" because subject to its dominant powers. See *Satterwhite* v. *Garrison*, 34 Cal. App. 734, 168 P. 1053; *Orndorff* v. *State*, 108 S. W. (2d) 206, 209–211 and cases cited therein.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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DECEMBER 1944.

APPENDIX

Section 30 of the Organic Act of Puerto Rico (Act of March 2, 1917, c. 145, § 30, 39 Stat. 959) as amended by the Act of June 1, 1938 (c. 308, 52 Stat. 595; 48 U. S. C. § 819) provides:

> The terms of office of senators and representatives elected at any general election shall be for four years, commencing on the 2d day of January following the date upon which such election was held. In case of a vacancy in the office of any senator or representative occuring by reason of death, resignation, or otherwise, the Governor, upon the recommendation of the central committee of the political party of which such senator or representative was a member, shall appoint a senator or representative from such political party to fill such vacancy who shall hold office for the remainder of the term for which his predecessor was elected. No senator or representative so elected or appointed shall, during his term of office, be appointed to any civil office under the Government of Puerto Rico, and no such senator or representative shall be eligible for appointment to any office created during his term of office until the expiration of two years after the date upon which his term of office shall have expired.

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